

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| CONNECT AMERICA FUND |) | WC Docket No. 10-90 |
| |) | |
| HIGH-COST UNIVERSAL SERVICE SUPPORT |) | WC Docket No. 05-337 |
| |) | |

**COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS
ALLIANCE IN RESPONSE TO WINDSTREAM PETITION FOR WAIVER**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the Petition for Waiver filed by Windstream Communications, Inc. (“Windstream”) on July 24, 2012 in the above-captioned proceedings.¹ Windstream seeks a waiver of Section 54.312(b) of the Commission’s rules permitting price cap carriers that elect to receive Connect America Fund (“CAF”) Phase I funds to utilize only \$775 per unserved location to deploy broadband to such locations.² If the requested relief is granted, Windstream would first be required to deploy 4 Mbps service to all unserved locations where \$775 in incremental support is sufficient to make an economic case for deployment, which is consistent with the current Commission rule. However, Windstream would then be allowed to spend the additional funding it has been allocated under CAF Phase I to deploy second-mile fiber facilities that will enable broadband access speeds of at least 4 Mbps/768 Kbps for unserved consumers.

ITTA believes that any waiver that would enable a price cap carrier to offer broadband service to locations in high-cost areas that otherwise would remain unserved by any competitor would serve the public interest. Windstream’s request goes to the very core of the Commission’s goals of CAF Phase I “to provide an *immediate* boost to broadband deployment”

¹ Windstream Election and Petition for Waiver, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012) (“Windstream Petition”).

² 47 C.F.R. § 54.312(b).

to rural consumers that lack access to such service today.³ Therefore, the Commission should not only grant the Windstream Petition without further delay, it should make the relief requested available to all price cap carriers that were allocated CAF Phase I funding.

DISCUSSION

Under the Commission's rules, a waiver is "appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest."⁴ As demonstrated below, special circumstances exist with respect to the instant request.

Furthermore, grant of the relief requested to Windstream and other price cap carriers that were allocated CAF Phase I funding would serve the public interest by helping to bring robust, reliable and affordable broadband service to unserved Americans in the near term while long-term CAF Phase II reforms are put in place.

With respect to the first prong of the two-part test, special circumstances arise from the fact that the rule at issue simply does not allow the Commission to attain the purported objective it sought to achieve in establishing CAF Phase I. In fact, rigid observance to the rule threatens the very purpose of the CAF Phase I grant of \$300 million to price cap carriers to "expand voice and broadband availability as much and as quickly as possible" and help "close[e] the rural-rural divide" for consumers in areas of the country who need it most.⁵

³ *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 137 (rel. Nov. 18, 2011) ("*USF/ICC Reform Order*") (emphasis added).

⁴ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, et al.*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, ¶ 88, n. 256 (2007); *see generally* 47 C.F.R. § 1.3.

⁵ *USF/ICC Reform Order* at ¶¶ 21-22, 128 n. 201, 145. As the Commission noted in the *USF/ICC Reform Order*, "[m]ore than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas." *Id.* at ¶ 127.

Under the current rules, price cap carriers elected only \$115 million of the \$300 million in funding dedicated to CAF Phase I, leaving \$185 million that will remain unutilized unless the Commission takes action to enable this funding to be used for its intended purpose.⁶ Such a result cannot be squared with the Commission’s priority “to immediately start to accelerate broadband deployment to unserved areas across America” while it designs and implements the long-term CAF Phase II distribution methodology.⁷ This outcome is particularly troublesome in light of the Commission’s recent conclusions in its annual broadband report that broadband is not yet being deployed in a reasonable and timely fashion, and that significant gaps among the 19 million Americans who lack access to broadband, most of whom reside in rural areas, will remain until the Commission’s CAF reforms are “fully implemented.”⁸

In Windstream’s case, strict adherence to the rule as written “means that Windstream will not be able to use approximately 99 percent of the CAF Phase I funding allocated to its service territory,” leaving it unable “to address the needs of the vast majority of its many unserved rural customers.”⁹ Under the current rule, Windstream can only accept a small fraction of the funding it has been allocated – only \$653,325 of \$60.4 million set aside for the company – which will

⁶ CenturyLink also filed a Petition for Waiver that would allow it to use CAF Phase I funding to deploy broadband to areas that the National Broadband Map inaccurately identifies as served by certain Wireless Internet Service Providers. *See* CenturyLink Petition for Waiver, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208 (filed June 26, 2012). ITTA supports grant of the CenturyLink petition. *See* Comments of ITTA in Support of CenturyLink Petition for Waiver, WC Docket No. 05-337; GN Docket No. 09-51 (filed July 12, 2012).

⁷ *USF/ICC Reform Order* at ¶ 132.

⁸ *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, Eight Broadband Progress Report, FCC 12-90, ¶ 5 (rel. Aug. 21, 2012).

⁹ Windstream Petition at 2.

allow it to reach only 843 unserved locations.¹⁰ Meanwhile, thousands of rural Americans in Windstream’s territory will be denied the benefits of broadband for the foreseeable future while the Commission continues to address how to implement large-scale CAF Phase II reform.

However, if the waiver is granted, Windstream estimates that it would be able to extend 1,688 miles of fiber-optic, second mile infrastructure into remote areas of 15 states and bring robust broadband service to 16,981 locations – and the approximately 44,000 consumers who live there – that lack any broadband access today.¹¹ As Windstream points out, “[t]he choice before the Commission is clear: It can waive the rules in the limited fashion [Windstream requests] or it can consign these thousands of rural Americans to more years of waiting for the benefits of broadband notwithstanding the availability of more than \$59 million that could be used to deliver service much sooner.”¹² Consumers should not be deprived of the benefits of broadband service when Windstream and other affected price cap carriers are in a position to offer service to them.

As for the second prong of the two-part test, providing the relief requested would serve the public interest precisely because it furthers the very purpose of CAF Phase I to “spur immediate broadband buildout” to American consumers and to close the rural-rural divide by enabling “price cap carriers to extend robust scalable broadband to hundreds of thousands of unserved Americans.”¹³ These public benefits would only be further enhanced if the Commission were to extend the relief requested in the Windstream Petition to other price cap carriers that have been allocated CAF Phase I funding.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *USF/ICC Reform Order* at ¶ 22.

One of the Commission's most important objectives in recent years has been to facilitate universal broadband access and adoption for all Americans, particularly for consumers in rural areas such as those where Windstream and similar providers offer service.¹⁴ Access to robust broadband service is "crucial to our nation's economic growth, global competitiveness, and civic life. Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education."¹⁵ Indeed, the job opportunities broadband access makes available "are critical to our nation's economic recovery and long term economic health, particularly in small towns... [and] rural and insular areas."¹⁶

Given the importance of the goal of universal broadband access, no policy basis exists to deny the relief requested to all eligible price cap carriers when it would help achieve the basic objective of the CAF Phase I program. In fact, denial of the petition would suppress investment and subvert the Commission's wider broadband deployment initiatives. Most importantly, it would deprive many thousands of households and consumers in numerous states, where price cap carriers are poised to rapidly build-out network infrastructure, of the opportunity to subscribe to quality, affordable broadband services.

It cannot be emphasized enough that the Commission's decision to grant the requested relief for all eligible price cap carriers will determine whether many thousands of geographically remote American households will, or will not, have fast and dependable broadband Internet access at affordable prices. In today's economy, access to broadband means access to jobs and economic opportunity, in addition to better education and healthcare. And for all Americans,

¹⁴ See *id.* at ¶ 5.

¹⁵ *Id.* at ¶ 3 (internal citations omitted).

¹⁶ *Id.*

particularly consumers in the most rural areas of the country, broadband access means “a better way of life.”¹⁷ Granting Windstream’s request, and extending similar relief to other price cap carriers that have been allocated CAF Phase I funding, will make broadband a reality for many thousands of households while furthering the Commission’s mission to ensure that all Americans are served by high-speed Internet access where they live, work, and travel.

CONCLUSION

For all of the foregoing reasons, the Commission should expeditiously grant the Windstream Petition and extend the requested relief to all price cap carriers that have been allocated CAF Phase I funding.

Respectfully submitted,

By: /s/ Genevieve Morelli

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¹⁷ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xi (rel. Mar. 16 2010).